

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

LARRY DALE JOHNSON,

Plaintiff,

v.

ROBERT HAYDEN,

Defendant.

No. 3:11-cv-00539-ST

OPINION AND ORDER

MOSMAN, J.,

On February 10, 2012, Magistrate Judge Stewart issued her Findings and Recommendation (“F&R”) [35] in the above-captioned case, recommending that I grant defendant’s motion to dismiss [24] and dismiss this case with prejudice. No objections were filed.

DISCUSSION

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a de novo determination regarding those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the

court is not required to review, de novo or under any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1)(C).

Upon review, I agree with Judge Stewart's recommendation and I ADOPT the F&R [35] as my own opinion, with one additional point. Mr. Johnson failed to respond to the motion to dismiss or object to the F&R. He therefore failed to explain how he might amend the complaint in a way that could remedy the problems defendant and Judge Stewart identified. This failure further supports dismissal with prejudice.

IT IS SO ORDERED.

DATED this 28 day of February, 2012.

/s/ Michael W. Mosman
MICHAEL W. MOSMAN
United States District Court